

# HOUSE . . . . . No. 4179

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, June 18, 2012.

The committee on Ways and Means, to whom was referred the Bill financing improvements to the Commonwealth's transportation system (House, No. 4145), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4179).

For the committee,

BRIAN S. DEMPSEY.

# HOUSE . . . . . No. 4179

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve  
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An Act financing improvements to the Commonwealth's transportation system.

*Whereas*, the deferred operation of this act would tend to defeat its purpose, which is forthwith to finance improvements to the Commonwealth's transportation system, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. To provide for a program of transportation development and improvements, the  
2 sums set forth in sections 2 to 2D, inclusive, for the several purposes and subject to the  
3 conditions specified in this act, are hereby made available, subject to the laws regulating the  
4 disbursement of public funds. The sums appropriated in this act shall be in addition to any  
5 amounts previously appropriated and made available for these purposes.

6 SECTION 2.

7 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

8 Highway Division

6121-1215 For projects on the interstate federal aid highway system; provided, that funds may be expended for the costs of these projects including, but not limited to, the nonparticipating portions of these projects and the costs of engineering and other services essential to these projects, rendered by Massachusetts Department of Transportation employees or by consultants; provided further, that amounts expended for department employees may include the salary and salary-related expenses of these employees to the extent that they work on or in support of these projects; provided further, that notwithstanding this act or any other general or special law to the contrary, the department shall not enter into any obligations for projects which are eligible to receive federal funds under this act unless state matching funds exist which have been specifically authorized and are sufficient to fully fund the corresponding state portion of the federal commitment to fund these obligations; and provided further, that the department shall only enter into obligations for projects under this act based upon a prior or anticipated future commitment of federal funds and the availability of corresponding state funding authorized and appropriated for this use by the general court for the class and category of project for which this obligation applies.....\$225,000,000

6121-1216 For federal aid projects on the non-interstate federal highway system; provided, that funds may be expended for the costs of these projects including, but not limited to, the nonparticipating portions of these projects and the costs of engineering and other services essential to these projects rendered by Massachusetts Department of Transportation employees or by consultants; provided further, that amounts expended for department employees may include the salary and salary-related expenses of these employees to the extent that they work on or in support of these projects; provided further, that notwithstanding this act or any other

32 general or special law to the contrary, the department shall not enter into any obligations for  
33 projects which are eligible to receive federal funds under this act unless state matching funds  
34 exist which have been specifically authorized and are sufficient to fully fund the corresponding  
35 state portion of the federal commitment to fund these obligations; and provided further, that the  
36 department shall only enter into obligations for projects under this act based upon a prior or  
37 anticipated future commitment of federal funds and the availability of corresponding state  
38 funding authorized and appropriated for this use by the general court for the class and category  
39 of project for which this obligation  
40 applies.....\$525,000,000

41 SECTION 2A.

42 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

43 Highway Division

44 6121-1217 For the design, construction, and repair of, or improvements to, non-federally-aided  
45 roadway and bridge projects and for the nonparticipating portion of federally-aided projects;  
46 provided, that the costs of professional personnel directly and exclusively involved in the  
47 construction, planning, engineering and design of the projects funded herein may be charged to  
48 this item, and any other associated costs; provided further, that those costs shall not be classified  
49 as administrative costs; and provided further, that the amounts specified in this item or for a  
50 particular project may be adjusted in order to facilitate other needs of the  
51 department.....\$325,000,000

52 SECTION 2B.

53 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

54 Highway Division

55 6122-1223 For the construction and reconstruction of town and county ways as described in  
56 clause (b) of the second paragraph of section 4 of chapter 6C of the General Laws, the “chapter  
57 90 program”; provided that a city or town shall comply with the procedures established by the  
58 Massachusetts Department of Transportation; provided further, that any city or town may  
59 appropriate for these projects amounts not in excess of the amount provided to the city or town  
60 under this item, preliminary notice of which shall be provided by the department to the city or  
61 town not later than April 1 of each year; provided further, that the appropriation shall be  
62 considered as an available fund upon approval of the commissioner of revenue under section 23  
63 of chapter 59 of the General Laws; and provided further, that the commonwealth shall reimburse  
64 a city or town under this item, subject to the availability of funds as provided in section 9B of  
65 chapter 29 of the General Laws, within 30 days after receipt by the department of a request for  
66 reimbursement from the city or town, which request shall include certification by the city or  
67 town that actual expenses have been incurred on projects eligible for reimbursement under this  
68 item, and that the work has been completed to the satisfaction of the city or town according to  
69 the specifications of the project and in compliance with applicable laws and procedures  
70 established by the  
71 department.....\$200,000,000

72 SECTION 2C.

73 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

74 Rail and Transit Division

75 6622-1205 For the purposes of chapter 161B of the General Laws, including the purchase and  
76 rehabilitation of rolling stock, related assets and support equipment necessary to safely serve  
77 transit passengers, construction and rehabilitation of regional transit authority operations and  
78 passenger facilities, and purchase of related appurtenances and  
79 tools.....\$11,000,000

80 SECTION 2D.

81 MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

82 Rail and Transit Division

83 6622-1280 For the purpose of implementing rail improvements under chapter 161C of the  
84 General Laws; provided, that funds may also be used for transportation planning, design,  
85 permitting, acquisition of interests in land, and engineering for heavy rail, light rail, bus, and  
86 other transit projects, including the industrial rail access program; provided, however, the  
87 department shall adopt regulations within 180 days of the effective date of this act implementing  
88 the industrial rail access program, which shall increase access to rail freight service and preserve  
89 or stimulate economic development through the generation of new or expanded rail service;  
90 provided that, the secretary of transportation shall have the responsibility for evaluating and  
91 selecting eligible projects, in consultation with the secretary of housing and economic  
92 development, where the public benefit will be gained through improved use of the rail  
93 transportation network or that will facilitate economic growth through access to the rail assets  
94 within the commonwealth; provided that the program shall be available to any political  
95 subdivision, railroad or shipper operating within the commonwealth; and, provided further, that  
96 the amounts specified in this item or for a particular project may be adjusted in order to facilitate

other needs of the department or other

projects.....\$300,000,000

SECTION 3. Section 2 of chapter 6C of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b) The department shall be governed and its corporate powers exercised by a board of directors. The board shall consist of 7 members appointed by the governor for a term of 4 years, 3 of whom shall be experts in the field of public or private transportation finance; 2 of whom shall have practical experience in transportation planning and policy; 1 of whom shall be the secretary of transportation, who shall serve ex officio; and 1 of whom shall be a registered civil engineer with at least 10 years experience. One of the members shall be designated by the governor to serve as chairperson of the board. Not more than 4 of the directors, except the ex-officio director, shall be members of the same political party. Each director shall serve without compensation but may be reimbursed for actual and necessary expenses reasonably incurred in the performance of their duties, including reimbursement for reasonable travel; provided, however, that such reimbursement shall not exceed \$3000 annually. Any person appointed to fill a vacancy in the office of a member of the board shall be appointed in a like manner and shall serve for only the unexpired term of such former member. Any director shall be eligible for reappointment. Any director may be removed from his appointment by the governor for cause. The board shall annually elect 1 of its members to serve as vice-chairperson.

117 SECTION 4. Said section 2 of said chapter 6C, as so appearing, is hereby further amended by  
118 striking out, in line 30, the word “Four” and inserting in place thereof the following words:- A  
119 majority of.

120 SECTION 5. Said Section 2 of said chapter 6C, as so appearing, is hereby further amended by  
121 striking out, in lines 67 to 68, the words “and the treasurer, as elected by the board pursuant to  
122 subsection (f)” and inserting in place thereof the following words:- of the department.

123 SECTION 6. Said Section 2 of said chapter 6C, as so appearing, is hereby further amended by  
124 inserting after the last sentence in subsection (f) the following sentence:- The secretary of the  
125 board is authorized to delegate in writing any of their powers and duties required pursuant to this  
126 section.

127 SECTION 7. Chapter 161A of the General Laws is hereby amended by striking out section 7, as  
128 appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

129 Section 7. The authority shall be governed and its corporate powers exercised by the board of  
130 directors of the Massachusetts Department of Transportation established pursuant to chapter 6C.

131 SECTION 8. To meet the expenditures necessary in carrying out section 2, the state treasurer  
132 shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to  
133 be specified by the governor from time to time but not exceeding, in the aggregate,  
134 \$750,000,000. All bonds issued by the commonwealth shall be designated on their face,  
135 Transportation Improvement Loan Act of 2012, and shall be issued for a maximum term of  
136 years, not exceeding 30 years, as the governor may recommend to the general court under  
137 section 3 of Article LXII of the Amendments to the Constitution. All bonds shall be payable not  
138 later than June 30, 2047. All interest and payments on account of principal on these obligations



shall be payable from the Commonwealth Transportation Fund. Notwithstanding any other provisions of this act, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 9. To meet the expenditures necessary in carrying out section 2A, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, \$325,000,000. All bonds issued by the commonwealth shall be designated on their face, Transportation Improvement Loan Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution. All bonds shall be payable not later than June 30, 2047. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Notwithstanding any other provisions of this act, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 10. To meet the expenditures necessary in carrying out section 2B, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, the sum of \$200,000,000. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Town and County Ways and Economic Development Loan, Act of 2012, and shall be issued for a maximum terms of years, not exceeding 30 years, as the governor may recommend to the general court under Section 3 of Article LXII of the Amendments to the Constitution of the Commonwealth. All bonds shall be payable not later than June 30, 2047. All interest and payments on account of principal of these obligations shall be payable from the General Fund.

Notwithstanding any other general or special law to the contrary, bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 11. To meet the expenditures necessary in carrying out section 2C, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, \$11,000,000 which shall be in addition to those bonds previously authorized for projects and programs which are eligible to receive federal funding and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to the general court under section 3 of Article LXII of the Amendments to the Constitution; provided, however, that all these bonds shall be payable not later than June 30, 2047. All interest and payments on account of principal on these obligations shall be payable from the Commonwealth Transportation Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 12. To meet the expenditures necessary in carrying out section 2D, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, \$300,000,000 which shall be in addition to those bonds previously authorized for projects and programs which are eligible to receive federal funding and which authorizations remain uncommitted or unobligated on the effective date of this act. All bonds issued by the commonwealth as aforesaid shall be designated on their face, Transportation Improvement Loan Act of 2012, and shall be issued for a maximum term of years, not exceeding 30 years, as the governor may recommend to

the general court under section 3 of Article LXII of the Amendments to the Constitution;  
provided, however, that all these bonds shall be payable not later than June 30, 2047. All interest  
and payments on account of principal on these obligations shall be payable from the  
Commonwealth Transportation Fund. Bonds and interest thereon issued under this section shall  
be general obligations of the commonwealth.

SECTION 13. Notwithstanding any general or special law to the contrary, in carrying out  
sections 2 to 2D, inclusive, and all other provisions of this act, the Massachusetts Department of  
Transportation may enter into contracts, agreements, or transactions that may be appropriate with  
other federal, state, local or regional public agencies or authorities. The contracts, agreements, or  
transactions may relate to such matters as the department shall determine including, without  
limitation, the research, design, layout, construction, reconstruction or management of  
construction of all or a portion of these projects. In relation to any such contracts, agreements, or  
transactions the department may advance monies to these agencies or authorities, without prior  
expenditure by the agencies or authorities, and the agencies and authorities may accept monies  
necessary to carry out these agreements; provided, however, that the department shall certify to  
the comptroller the amounts so advanced; provided further, that these agreements shall contain  
provisions satisfactory to the department for the accounting of monies expended by any other  
agency or authority; and provided, further, that all monies not expended under any such  
agreement shall be credited to the account of the department from which they were advanced.  
The department shall report to the house and senate committees on ways and means on any  
transfers completed under this section.

SECTION 14. (a) Notwithstanding any other general or special law to the contrary, the  
Massachusetts Department of Transportation shall expend the sums authorized in sections 2A

and 2B for the following purposes: projects for the laying out, construction, reconstruction, resurfacing, relocation or necessary or beneficial improvement of highways, bridges, bicycle paths or facilities, on- and off-street bicycle projects, sidewalks, telecommunications, parking facilities, auto-restricted zones, scenic easements, grade crossing eliminations and alterations of other crossings, traffic safety devices on state highways and on roads constructed under clause (b) of the second paragraph of section 4 of chapter 6C of the General Laws, highway or mass transportation studies, including, but not limited to, traffic, environmental or parking studies, the establishment of school zones in accordance with section 2 of chapter 85 of the General Laws, improvements on routes not designated as state highways without assumption of maintenance responsibilities and, notwithstanding any general or special law to the contrary, projects to alleviate contamination of public and private water supplies caused by the department's storage and use of snow removal chemicals which are necessary for the purposes of highway safety and for the relocation of persons or businesses or for the replacement of dwellings or structures including, but not limited to, providing last resort housing under federal law and such functional replacement of structures in public ownership as may be necessary for the foregoing purposes and for relocation benefits to the extent necessary to satisfy the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., Pub. L. 97-646, 84 Stat. 1864 (1971), and to sell any structure the title to which has been acquired for highway purposes. When dwellings or other structures are removed in furtherance of any of the foregoing projects, the excavations or cellar holes remaining shall be filled in and brought to grade within 1 month after the removal. In planning projects funded by said sections 2A and 2B, consideration shall be made, to the extent feasible, to accommodate and incorporate provisions to facilitate the use of bicycles and walking as a means of transportation; provided,

however, that nothing in this section shall be construed to give rise to enforceable legal rights in any party or a cause of action or an enforceable entitlement as to the projects described in this section.

(b) Funds authorized in sections 2A and 2B shall, except as otherwise specifically provided in this act, be subject to the first paragraph of section 6 and sections 7 and 9 of chapter 718 of the acts of 1956, if applicable, and, notwithstanding any general or special law to the contrary, may be used for the purposes stated in this act in conjunction with funds of cities, towns and political subdivisions.

(c) In addition to the foregoing, the Massachusetts Department of Transportation may expend funds made available by this act to acquire from a person by lease, purchase, eminent domain under chapter 79 of the General Laws or otherwise, land or rights in land for parking facilities adjacent to a public way to be operated by the department or under contract with an individual; expend funds made available by this act for the acquisition of van-type vehicles used for multi-passenger, commuter-driven carpools and high-occupancy vehicles including, but not limited to, water shuttles and water taxis; and, in accordance with all applicable state and federal laws and regulations, exercise all powers and do all things necessary and convenient to carry out the purposes of this act.

(d) In carrying out this section, the Massachusetts Department of Transportation may enter into contracts or agreements with cities to mitigate the effects of projects undertaken under this act and to undertake additional transportation measures within the city and may enter into contracts, agreements, or transactions with other federal, state, local or regional public agencies, authorities, nonprofit organizations or political subdivisions that may be necessary to implement

these contracts or agreements with cities. Cities and other state, local or regional public agencies, authorities, nonprofit organizations or political subdivisions may enter into these contracts, agreements, or transactions with the department. In relation to these agreements, the department may advance to these agencies, organizations or authorities, without prior expenditure by the agencies, organizations or authorities, monies necessary to carry out these agreements; provided, however, that the department shall certify to the comptroller the amount so advanced; provided further, that all monies not expended under these agreements shall be credited to the account of the department from which they were advanced. The department shall report to the house and senate committees on ways and means on any transfers completed under this subsection.

(e) In addition to the foregoing, the department may expend funds made available by this act for matching funds to obtain federal funds for costs associated with the design, acquisition, renovation, construction, reconstruction and other improvements for transit projects.

SECTION 15. Notwithstanding any other general or special law to the contrary, the Massachusetts Department of Transportation shall take all necessary actions to secure federal highway or transportation assistance which is or may become available to the department including, but not limited to, actions authorized under or in compliance with Title 23 of the United States Code, the Surface Transportation Act of 1987, Pub. L. 100-17, the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, the Transportation Equity Act for the 21st Century, Pub. L. 105-178, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59, Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. Law 110-53 and any successor acts or reauthorizations of those acts, and actions such as filing applications for federal assistance, supervising the expenditure of funds under federal grants or other assistance agreements and making any determinations and

certifications necessary or appropriate to the foregoing. If a federal law, administrative regulation or practice requires an action relating to federal assistance to be taken by a department, agency or other instrumentality of the commonwealth other than the Massachusetts Department of Transportation, the other department, agency or instrumentality shall take such action.

SECTION 16. Notwithstanding any other general or special law to the contrary, all construction contracts funded in whole or in part by the funds authorized by this act shall include a price adjustment clause for each of the following: fuel, both diesel and gasoline, asphalt, concrete and steel. A base price for each material shall be set by the awarding authority or agency and included in the bid documents at the time a project is advertised. The awarding authority or agency shall also identify in the bid documents the price index to be used for each material or supply. The adjustment clause shall provide for a contract adjustment to be made on a monthly basis when the monthly cost change exceeds +/- 5 per cent.

SECTION 17. Notwithstanding any other general or special law to the contrary, section 61 and sections 62A to 62I, inclusive, of chapter 30 of the General Laws, chapter 91 of the General Laws and section 40 of chapter 131 of the General Laws shall not apply to bridge projects of the Massachusetts Department of Transportation and the Massachusetts Bay Transportation Authority for the repair, reconstruction, replacement or demolition of existing state highway, authority and municipally-owned bridges, including the immediate approaches necessary to connect the bridges to the existing adjacent highway and rail system, in which the design is substantially the functional equivalent of, and in similar alignment to, the structure to be reconstructed or replaced; provided, however, that said section 61 and said sections 62A to 62I, inclusive, of said chapter 30 shall apply to the repair, reconstruction, replacement or demolition project where the project requires a mandatory environmental impact report under 301 CMR

11.00; provided further, that all such work shall be subject to the requirements of the then current edition of the Massachusetts Department of Transportation's Stormwater Handbook as approved by the department of environmental protection in accordance with applicable law, that notice shall be published in the Environmental Monitor of any application to the department of environmental protection for a water quality certification, and that the work shall be subject to performance standards prescribed by the department of environmental protection under section 401 of the Federal Clean Water Act if applicable to the project; provided further, that notwithstanding the foregoing, said section 61 and said sections 62A to 62I, inclusive, of said chapter 30, said chapter 91, and said section 40 of said chapter 131 shall apply to any portions of the bridge and roadway approaches to the crossing of the Charles river for the Central Artery/Tunnel Project. If any state highway, authority, or municipal bridge crosses over a railroad right-of-way or railroad tracks, the department or authority, as applicable, shall seek the opinion of a railroad company, railway company or its assigns operating on the track of a necessary clearance between the track and the bridge, but the department and the authority and their agents or contractors may enter upon any right-of-way, land or premises of a railroad company or railway company or its assigns for purposes that the department or authority may consider necessary or convenient to carry out this section. If a flagman is needed to carry out this section, the railroad company, railway company or its assigns shall provide the flagman. For the purposes of this section, "bridge" shall include any structure spanning and providing passage over water, railroad right-of-way, public or private way, other vehicular facility or other area. Any project exempted from any provision of law under this section shall be subject to the public consultation process required by the then current version of the Massachusetts Department of Transportation's Project Development and Design Guidebook.



322 SECTION 18. Notwithstanding any general or special law to the contrary, the unexpended  
323 balances of all capital accounts which otherwise would revert on June 30, 2012, but which are  
324 necessary to fund obligations during fiscal year 2013, are hereby re-authorized.